[Mr. K. Narayanan Pandalay.]

in Physiology and Anatomy. Now he has produced three books for which he has had to incur an expenditure of about Rs. 900. As this is a scientific treatise, we cannot expect a ready sale for the book; and therefore on the recommendation of the Director of Ayurveda, this additional grant is proposed to be given as honorarium to Mr. Kesava Pillai who will have to supply 100 books free of cost to Government.

MR. A. J. JOHN (*Vaikam*): May I know the price of the book.

MR. K. NARAYANAN PANDALAY (*Ag. Chief Secretary to Government*): Rs. 2 per copy.

MR. C. P. THOMAS (*Nominated*): May I know whether the books are continuations of the same treatise or are different text-books?

MR. K. NARAYANAN PANDALAY (*Ag. Chief Secretary to Government*): One book Pratyaksha Sariram (പ്രത്യക്ഷശാരീരം) is in two parts.

MR. K. I. JOSEPH (*Meenachil* cum *Devicolam*): May I know how these copies are to be disposed of?

MR. K. NARAYANAN PANDALAY (*Ag. Chief Secretary to Government*): It has not been decided how these copies should be used or disposed of.

PRESIDENT. May I take it that the House agrees to the grant?

The grant was made.

LEGISLATION.

THE NANJANAD VELLALA BILL.

MR. KAYALAM PARAMESVARAN PILLAI (*Ag. Additional Head Sirkar Vakil*): Sir, the next business is the consideration of the Nanjanad Vellala Bill. The report of the Select Committee has already been presented to the House. I move that the Bill as reported by the Select Committee be taken up for consideration.

MR. M. SIVATANU PILLAI (*Tovala*): Sir, I rise to a point of order.

MR. C. P. TARAKAN (*Kunnatnad*): The motion of Mr. Kayalam Paramesvaran Pillai has not been seconded.

MR. M. SIVATANU PILLAI (*Tovala*): I rise to a point of order. There is mention made in the Select Committee Report of the dissenting minute by Mr. Subrahmanya Pillai. No such dissenting minute is either printed or circulated. Standing Order 35 requires that any minutes that may have been recorded by individual members of the Committee, and, if the Bill has been amended, the Bill as amended by the Committee, shall be printed and copies furnished to each member of the Council. That has not been done. As such, the Select Committee Report should not be considered at this stage.

MR. KAYALAM PARAMESVARAN PILLAI (*Ag. Additional Head Sirkar Vakil*): Sir, may I say a word before you give your ruling? The point raised by Mr. Sivatanu Pillai may come for discussion in the

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motion given notice of by him and Mr. Subrahmanya Pillai for recommitting the Bill to a Select Committee. One of the points then raised will be why the dissenting minute of Mr. Subrahmanya Pillai was not published. There *is* some reason why it was not printed and published. But for the present I may say that the President has got the power to overrule this objection.

MR. K. MADHAVAN PILLAI (*Trivandrum* cum *Neduvangad*): Is there not a rule stating that the minutes shall be circulated among the members?

MR. KAYALAM PARAMESVARAN PILLAI (*Ag. Additional Head Sirkar Vakil*): Yes. But if it is not done, what is the consequence?

MR. K. MADHAVAN PILLAI (*Trivandrum* cum *Neduvangad*): How can it *not* be circulated?

MR. KAYALAM PARAMESVARAN PILLAI (*Ag. Additional Head Sirkar Vakil*): What I ask is, if it is not circulated, what is the consequence?

The consequence is that the Bill cannot under a Standing Order be taken into consideration. But the President has got the power to suspend that Standing Order and say that the Bill may be taken into consideration. This is what Standing Order 37 says:—

"After the presentation of the final report of the Select Committee on a Bill, the member in charge may move—

"that the Bill as reported by the Select Committee be taken into consideration, but any member may object to its being so taken into consideration if a copy of the report has not been available for the use of members for seven days, or if three months have not elapsed from the date of the first publication of the Bill; and such objection shall prevail unless the President in the exercise of his power to suspend this order allows the report to be taken into consideration."

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): I beg to state that the ground alleged by Mr. Sivatanu Pillai does not come under any of these clauses.

MR. KAYALAM PARAMESVARAN PILLAI (*Ag. Additional Head Sirkar Vakil*): I think his objection is that the full report has not been circulated or published.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Mr Sivatanu Pillai's objection is based on Standing Order 35. But the objection of the Law Member appears to be based on Standing Order 37 wherein it is said:—

"Any member may object to its being so taken into consideration if a copy of the report has not been available for the use of members for 7 days, or if 3 months have not elapsed from the date of the first publication of the Bill; and such objection shall prevail unless the President in the exercise of his power to suspend this order allows the report to be taken into consideration."

The ground alleged by Mr. Sivatanu Pillai does not come under this.

MR. KAYALAM PARAMESVARAN PILLAI (*Ag. Additional Head Sirkar Vakil*): The ground on which Mr. Sivatanu Pillai bases his objection is that Standing Order 35 has not been obeyed. But I ask, what is the consequence? The consequence is provided for, *viz.*, Standing Order 37

MR. M. SIVATANU PILLAI (*Tovala*): The dissenting minute has got to be published.

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PRESIDENT: Am I to understand your objection to be that a 'report' has got to be printed and circulated under the rules and that the term 'report' includes 'minutes', and that, since the 'minutes' have been excluded from the Report, the Bill must be recommitted to the Select Committee?

MR. M. SIVATANU PILLAI (*Tovala*): The rule definitely includes it. This is the wording: "any *minutes* that may have been recorded".

PRESIDENT: I read Rule 35 this way:

"The Report of the Select Committee, any minutes that may have been recorded by individual members of the Committee and, if the Bill has been amended, the Bill as amended by the Committee, shall be printed and copies furnished to each member of the Council."

The *report and minutes, if any* - these reports and minutes together constitute the necessary document; and if there have been amendments, these amendments should be printed and circulated. Then only will the requirements of Rule 35 be carried out. If the requirements of Rule 35 have not been carried out, it is open to you to raise an objection under Rule 37. Do you base your objection on this ground?

MR. M. SIVATANU PILLAI (*Tovala*): No.

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): May I say a word, Sir? I am sorry my friend Mr. Kayalam Paramesvaran Pillai has not looked up the back file on the subject. If he had done so, he would have been able to meet the point of Mr. Sivatanu Pillai. There is no doubt that Mr. Subrahmanya Pillai sent up a dissenting minute and it was not published.

MR. K. MADHAVAN PILLAI (*Trivandrum* cum *Neduvangad*): Who is to decide that?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): The President. I will come to that presently. I have just spoken one sentence and I have been interrupted. I will speak on that. If the subject had been considered, and if there was a valid reason for not publishing the dissenting minute and a final order was passed on the subject, it is a final disposal of the thing. The dissenting minute was not in order. That is to say, it contained statements about what took place between members of the Select Committee, which statements are strictly confidential.

MR. K. MADHAVAN PILLAI (*Trivandrum* cum *Neduvangad*): Is that the rule that is being observed in all Legislative Councils?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): That is observed everywhere. That is the practice. Everywhere, the proceedings of the select committees are confidential.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether it obtains in British India?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): It obtains in the English Parliament; it obtains in the Indian legislatures; and I think it ought to obtain here also. For the reason that there are no

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verbatim shorthand reports, the actual proceedings are not reported and the proceedings are supposed to be confidential. Therefore those statements cannot be divulged. Select Committee proceedings are always supposed to be a free and easy discussion and even informal sometimes and each member is entitled to have his own opinion on the various matters brought up. In other words, the proceedings are not very formal in the sense in which proceedings in this House are conducted. That being the case, it is only the final report and the minutes, if any, recorded by the members that are being published.

Mr. Subrahmanya Pillai's minute contained certain aspersions against some of the members and it was therefore not published. I was the Chairman of the Select Committee and I said that, if the minute is to be published, the objectionable portion should be taken out and that the rest only will be published. But Mr. Subrahmanya Pillai refused to do so. The matter was considered by the Select Committee and it was resolved not to publish it. The matter was referred to the President and, as Mr. Subrahmanya Pillai desired to be heard, the President heard him and he said that, unless the objectionable portions were withdrawn, the minute would not be published as it contained matters which could not be published.

I beg to submit that the objection of Mr. Sivatanu Pillai is out of place here, especially when Mr. Subrahmanya Pillai, who is himself a member of this House and is competent to take the objection himself, has not thought fit to do so.

PRESIDENT: My ruling is that 'report' includes a 'minute,' 'minute' being a *legitimate* minute. This minute of Mr. Subrahmanya Pillai's was ruled out by proper authority; and since there was no legitimate minute to be published, Mr. Sivatanu Pillai cannot now object on the ground of a non-existent minute. Therefore, I overrule Mr. Sivatanu Pillai's objection.

MR. K. GEORGE (*Financial Secretary to Government*): I second the motion of Mr. Kayalam Paramesvaran Pillai.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Sir, I beg to move that the Bill be recommitted to a fresh Select Committee. I may mention at the outset that the Bill, as amended by the Select Committee, is a sore disappointment. The community agitated for legislation more to codify their existing customs which the courts of the land seemed unable correctly to understand than to introduce any revolutionary measure. The Bill, as it stands at present, not only does not take into consideration this aspect of the matter but goes a long way in actively ignoring some of the most important rights of property now prevalent in the community. *Ukantudamai*, the right which the children of a deceased male have in the *tarwad* properties of their father, and *nankudamai*, the right which a childless widow has over the *tarwad* properties of the deceased husband, have nowhere been recognised, and no provision is made for them in the Bill. This, I believe, is due to the fact that the Select Committee have, consciously or unconsciously, adopted the dictum that the Nanjanad Vellalas are *marumakkathayees*. Once they

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[Mr. M. Subrahmanya Pillai.]

persuaded themselves to this frame of mind, they had no hesitation to apply the *marumakkathayam* law to the community. The provisions in the partition clause wherein alone adequate recognition of these rights could be made are quite in keeping with the theory that the Nanjanad Vellalas are *marumakkathayees*. The most important provision in the Bill is the clause dealing with partition and it is on the merits of this clause that the community judged the Bill.

I have no hesitation in condemning this attitude of the Select Committee as highly dangerous and fallacious. The Nanjanad Vellalas are never *marumakkathayees*; on the other hand, they are *ma kathayees* with certain incidents of *marumakkathayam* law engraft d in their system. Tradition and history support this view. The *State Manual* gives elaborate evidence to show that the Nanjanad Vellalas were originally *makkathayees* and goes on to say when and how they adopted some of the *marumakkathayam* customs. The two enquiry committees appointed by the Government accept this view. An inscription in the Pandyan dam gives the date of their b coming subjects of the Royal House of Travancore, when only the community began to adopt the existing *marumakkathayam* customs. I know it is rather late in the day t discuss this question. The community itself does not want to have this question settled one way or the other. But what the community insists is that its customs, whatever they might be, should be given adequate recognition.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): May I ask Mr. Subrahmanya Pillai whether the Nanjanad Vellalas are to-day *marumakkathayees* of *makkathayees*?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): They are *marumakkathayees* to some extent.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Are they pure *marumakkathayees*?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): No, they are not pure *marumakkathayees*.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): May I know what is the ruling of the High Court in regard to this?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): The ruling of the High Court is that they recognise to some extent the *marumakkathayam* customs.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): How do they describe themselves in documents?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): As mere Vellalas.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Is there any document in which they have described themselves as *makkathayees*?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I must look up to give an answer.

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MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : Are there not some documents in which they described themselves as *marumakkathayees*?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : There may be.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*) : May I know whether Mr. Subrahmanya Pillai, belonging to the Vellala community, and, representing that community in this House, is unable to quote any instance in which the members of his community described themselves as *makkathayees*?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : I say that they are *marumakkathayees* as well as *makkathayees*— both combined.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*) : My question is whether Mr. Subrahmanya Pillai is able to quote any instance, or, whether he is not aware of any instance in which the members of the Nanjanad Vellala community described themselves as *makkathayees*.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : I know they describe themselves as *marumakkathayees* occasionally in some documents.

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*) : Will the member please look into the Bill itself? It is the 'Nanjanad *Marumakkathaya* Vellala Bill'. May I ask if the member himself or any of his friends have introduced any amendment to delete the word '*marumakkathaya*'?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : It may be by an oversight.

MR. K. K. THOMAS (*Kottayam*) : Is the community composed purely of *marumakkathayees*?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : It contains *marumakkathayees* only, so far as I am aware; but they are not pure *marumakkathayees*.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : നാഞ്ചിനാട്ടു വെള്ളാള മക്കത്തായക്കാരും മരുമക്കത്തായക്കാരും തമ്മിൽ വിവാഹം നടപ്പുണ്ടോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : ഉണ്ട്.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : മക്കത്തായിയായ ഒരു സ്ത്രീയെ മരുമക്കത്തായിയായ ഒരു പുരുഷൻ വിവാഹം ചെയ്താൽ മക്കളുടെ അവകാശക്രമം എങ്ങനെ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : അതുടെ സ്വത്തിൽ അവകാശം?

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : പുരുഷന്റെ.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : ഉകന്നുടമാവകാശം മാത്രമേയുള്ളൂ.

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MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*). മരുമക്കത്തായിയായ ഒരു സ്ത്രീയെ മക്കത്തായിയായ ഒരു പുരുഷൻ വിവാഹം ചെയ്താൽ സ്വത്തവകാശം എങ്ങിനെ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): മക്കത്തായമായി മുഴുവൻ സ്വത്തും കിട്ടും.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): പുരുഷന്റെ സകല സ്വത്തുക്കൾക്കും ഈ സംഗതിയിൽ അവകാശം കിട്ടുകയും മറിച്ചതിൽ ഉകന്നുടമാവകാശം മാത്രം കിട്ടുകയും ചെയ്യുന്നു എന്നാണോ പറയുന്നത്?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): അതെ.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): അതിനുള്ള കാരണമെന്താണെന്നു പറയാമോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): അവരുടെ സമുദായത്തിൽ സ്വത്തു് അവകാശം എങ്ങനെയോ അതുപോലെ.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): നാഞ്ചിനാട്ടു വെള്ളാള സമുദായം വെറും മക്കത്തായമെന്നോ മരുമക്കത്തായമെന്നോ എങ്ങനെ അറിയാൻസാധിക്കും?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): രണ്ടും ചേർന്നതാണു്.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): അതിനു എന്തുപേരാണു് കൊടുക്കേണ്ടതു്?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): രണ്ടും ചേർത്തുകൊടുക്കുന്നതിൽ ഒരാക്ഷേപവും ഇല്ല.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): ഒരുസമുദായത്തെമക്കത്തായികളെന്നും മരുമക്കത്തായികളെന്നും പറയുന്നതെങ്ങിനെ? ഇവർക്കുഎന്തെങ്കിലും ഒരു പേർകല്പിക്കണമെല്ലോ? അതെന്താണു്?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): രണ്ടും ഉണ്ടെന്നു കല്പിക്കാം.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): രണ്ടുമായവും സ്വീകരിക്കുന്നതിനു എന്താണു് പറയേണ്ടതെന്നു് പറഞ്ഞാൽ മാത്രമേ അറിയാൻ സാധിക്കൂ.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): രണ്ടും ചേർത്തുള്ള ഒരു പേരുസൌകര്യമായി ആലോചിച്ചു പറയാം.

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MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : മിസ്റ്റർ സുബ്രഹ്മണ്യപിള്ള ഉകന്തുടമാവകാശം വാങ്ങീട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : Sir, is any personal reference relevant here?

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : It is not a personal reference; however, I will not mention his name.

ഒരു മരുമക്കത്തായിയായ പുരുഷൻ മക്കത്തായത്തിൽ ഉൾപ്പെട്ട ഒരു സ്ത്രീയെ വിവാഹം ചെയ്താൽ, ആ സ്ത്രീക്ക് ഉകന്തുടമാവകാശംമാത്രമേയുള്ളു എന്നാണ് പറഞ്ഞതു്. അങ്ങനെ ഉകന്തുടമാവകാശം കിട്ടീട്ടുള്ളതായി ദൃഷ്ടാന്തങ്ങൾ പറയാമോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : അവകാശം കിട്ടീട്ടുണ്ട്.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): കോടതി മുഖേന കേസുകൊടുത്തതിൽ ആഅവകാശം വിധിച്ചുകൊടുത്തതായി ദൃഷ്ടാന്തങ്ങൾപറയാമോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): ഇപ്പോൾ അറിഞ്ഞുകൂടാ.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : സെലക്ട് കമ്മിറ്റിയിൽ, ൨൨ പ്രമാണങ്ങൾ മെമ്പർ ഹാജരാക്കീട്ടുള്ളതായും, ൨൭ പ്രമാണങ്ങൾ മിസ്റ്റർ ചിദംബരതാണുപിള്ള ഹാജരാക്കിയതായും ഒരു ടൈപ്പു റിക്കാഡ് നിങ്ങൾക്കു കിട്ടീട്ടുണ്ടോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : ടൈപ്പുചെയ്തുകിട്ടീട്ടുണ്ട്. ൫൫ പ്രമാണങ്ങൾ ഞാനും മിസ്റ്റർ ചിദംബരതാണുപിള്ള ൨൨-ാ ഹാജരാക്കി.

They deny they were ever *marumakkathayees* pure and simple, and nobody has any right to confound them so, and much less the Select Committee, whose duty it was to find out what they actually were and are. They have made this absolutely clear in their first mass memorial presented to Government in the sixth session of the Assembly, the memorial on which all further activities connected with the Bill are based, and it runs thus :

"நாங்கள் ஆதியில் மக்கள்வழி வெள்ளாளர்களாயிருந்தவர்கள். எங்கள் முன்னோர் திருவிதாங்கூர் மகாராஜா அவர்களுடைய பிரஜைகளாய், வலியவந்துசேர்ந்துகொண்ட காலம் தொட்டு, மகாராஜா அவர்கள் மீது தமுக்குள்ள ராஜபக்தியின் அறிகுறியாக மருமக்கள்வழி அவகாசமுறைகளை கைக்கொண்டார்.—ஆனால் மக்கள்வழி பாத்தியதைகளை தள்ளிவிடாமல்—உகந்துடமை என்ற ஒரு நிராக்ஷேபமான அவகாசத்தை வைத்துக்கொண்டிருக்கிறோம். விவாகச்சடங்குகளும் பிதுர்கர்மங்களும் முற்காலம் போலவே நடத்திவருகிறோம்.

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[Mr. M. Subrahmanya Pillai]

முழு மருமக்கவழிகாரராகிய வேறு இனத்தாரை ஸம்மந்தித்து எற்படும் சட்டங்கள் தீர்ப்புகள் முதலியவற்றை அடிஸ்தானமாக்கியே எங்களுக்கு நியாயம் சொல்லுகிறார்கள். இதனல் எங்களது பூர்வீக ஆசாரங்களுக்கும் கொள்கைகளுக்கும் விவரீதமான அனேக மாற்றங்கள் எங்கள் ஸமூகத்தில் நாட்குநாட் வந்தேறிக்கொண்டிருக்கிறது.

Enumerating other defects arising from applying Marumakkathayam law "மேல்கூறிய குறைகள் நிவர்த்திக்க" the community pray for legislation.

So it is clear that it is against such misunderstandings of their customs and manners that the community agitated; and the conclusions of the Select Committee, based on such misunderstanding, the community can never accept.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): May I know whether it was the Select Committee that made the mistake or whether it was the Nanjanad Vellala Committee.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): The Nanjanad Vellala Committee also.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Was not Mr. Subrahmanya Pillai a member of the committee?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Yes.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Why did he not point out the mistake?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I admit the mistake myself?

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): When did he find out the mistake?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): After signing the report.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industry, North*): Is there any guarantee that he is not committing a mistake just now when he is opposing the Bill?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I may be.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): May I know whether he has been able to find out the feelings of the community or the customs of the community?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): It is a difficult question to answer.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Yes, it is a difficult question.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): So I am not going to answer that.

It is rather curious that the Select Committee should rely on the judge-made laws to support their conclusions. The agitation of the

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community was mainly directed against these laws, as they are made by judges with little or no experience of their customs and manners, and who straightway misjudged them as *marumakkathayees*. To call in support laws which were themselves bones of contention smacks like begging the question. It does not carry one very far.

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): How many years is it since we had these judge-made laws? Are they not at least half a century old?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I cannot answer him, Judge-made laws are developing day by day.

Another point which the Select Committee quote as justifying their conclusions is that the second Enquiry Committee have recommended *per capita* partition. The main grievance against the Enquiry Committee was that no documentary evidence was taken regarding partition, even though it was freely conceded that partition was a common feature in the community. The Select Committee themselves accepted this view and felt clearly that the Enquiry Committee's report was inadequate in this respect. The Select Committee, who set about to remedy this defect of the Enquiry Committee, did not fare any better. Obsessed with the idea that Nanjanad Vellalas are *marumakkathayees*, they formed an opinion that *per capita* was the only correct mode of partition. In their own words, they say that the documents do not prove any definite usage at all. I say there is a definite usage and that is not *per capita*, and there is not a single document clearly showing *per capita* division. The fact that partition is a very common feature in the community is admitted by all; and I make bold to say that a thorough and dispassionate examination of documents, unbiassed by any pre-conceived prejudice, would reveal the usage in unmistakable terms, to be *per stirpes* partition. Many of the *per stirpes* partition documents clearly enunciate as preamble that the partition is made according to the usage of the land; "கட்டுகட்டப்படிஎன்கிற" is the phrase used. The so-called *per capita* documents are really *per stirpes* documents, wherein the names of the members alone who divide the property equally are mentioned, with the names of descendants omitted.

Despite all these defects, noted in the Enquiry Committee, the Select Committee has no hesitation to say that the Report of the Enquiry Committee should be followed.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*): എൻകുയറി കമ്മിറ്റി റിപ്പോർട്ടു മുഴുവൻ നിങ്ങൾ സമ്മതിക്കുന്നുണ്ടോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): അവർ അയച്ച റിപ്പോർട്ടാണെന്നു ഞാൻ സമ്മതിക്കുന്നു.

MR. K. K. THOMAS (*Kottayam*): Does he say that the Report of the Select Committee is wrong.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Yes.

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MR. K. K. THOMAS (*Kottayam*): I am quoting from the Report of the Select Committee:

"There are documents evidencing both *per capita* partition and *per stirpes* partition."

Does the member say that there are no documents evidencing *per capita* partition?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I have not come across any document speaking of *per capita* partition.

MR. K. K. THOMAS (*Kottayam*): So this document is against facts?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): The analysis does not show that there was a single *per capita* partition. The statement made in the report is not a fact.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*): നിങ്ങൾക്കുടി ചേർന്നാണോ സിലക്ട് കമ്മിറ്റി റിപ്പോർട്ട് അയച്ചത്?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): ഞാൻ അതു മുമ്പേ സമ്മതിക്കുന്നു. I earnestly request the Chair to allow me to proceed; I am being cross-examined by several members.

MR. T. KUMARA PILLAI (*Kalkulam cum Vilavankod*): This is not a cross examination. The fourth document produced before the Select Committee was registered on 3-6-1099. I want to know whether, according to that document, it was not resolved to divide equally *per capita* among the major and minor members.

MR. M. SUBRAHAMANYA PILLAI (*Agastisvaram*): That is a document registered on 3-6-1099. It only states that it was resolved to divide equally *per capita*. But that was registered only when the Select Committee was in deliberation. That is a document in which it is said: 'ആലോചനയായി തീരുമാനിച്ചതിൻ വണ്ണം.'

But it is not really a document in which the *per capita* principle was really applied.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*): അപ്പെൻഡിക്സ് ൽ എന്നു പറയുന്നത്—

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): കുറച്ചു ക്ഷമിച്ചാൽ പറയാം.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*): അപ്പെൻഡിക്സ് ൽ നിങ്ങൾനോക്കീട്ടുണ്ടോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): അതിൽ ഭാഗത്തെ പ്പറ്റിരണ്ടു വകുപ്പുകളുണ്ട്. അതിൽ ഫ്രഷ് സമാവകാശത്തെ പറ്റി യാണ്. എന്നാൽ ർന്നു ൽ താഴ്ഭാഗമാണ്.

I have a request to the Chair. I beg the Chair to be good enough to allow me to proceed with my speech. The members may reserve their questions to the end.

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PRESIDENT : Yes.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : I can only account for this adherence of the Select Committee to the report of the Enquiry Committee by the fact that the Select Committee's pre-conceived idea of *per capita* partition has been recommended by the Enquiry Committee.

I have already pointed out that the Enquiry Committee did not examine any documents. Another feature which goes to lessen the value of the report is that it is only based on opinion. It is highly doubtful how far it is desirable to base social legislation affecting the entire community on the opinion of people who do not form even 2 per cent of the population.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : നായർ റഗുലേഷൻപാസ്സാക്കിയ കമ്മിറ്റിയിൽ നിങ്ങളും ഒരു മെമ്പറായിരുന്നു എന്നു സമ്മതിക്കുന്നുണ്ടോ ?

PRESIDENT : Let the member finish his speech, please.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : The way in which the opinions were tendered is also interesting. The so-called voluntary witnesses were rushed in by a few interested gentlemen and they did not say anything more than, "I agree with so and so". I shall illustrate what I mean by relating what took place in two centres where evidence was taken. At Darisanamcope, 44 witnesses deposed and 33 of them agreed with the others. At Vaikam, 18 deposed and 15 of them agreed with the others, "ഞാൻ ....തുടെ അഭിപ്രായത്തോട് പൂർണ്ണമായി യോജിക്കുന്നു. അതിൽക്കൂടുതലായി എനിക്ക് ഒന്നും പറയാനില്ല." This is the sort of opinion on which the Enquiry Committee's Report was based and which the Select Committee had no hesitation in calling in for support.

Over and above all these, there is another serious objection to *per capita* division in the Bill. There is no difference made between the *tarwad* and sub-*tarwad* properties. Even the Nair Bill recognises this difference. The sub-*tarwad* properties are mainly gifts by the father to his wife and children, augmented to a considerable extent by the absorption of the *Ukantudamai*, *Nankudamai* and *Yapian* properties. To apply *per capita* division to such properties defeats not only justice but also the intentions of the donor. And the only effect of the advocacy of the *per capita* division for such properties seems to be that the Select Committee intend making the Nanjanad Vellalas more *makkathayees* than *marumakkathayees* themselves.

On all these grounds, the community do not see their way to accept the Bill as it now stands. They have in unmistakable terms made clear their opposition to the Bill. The sixty and odd memorials which the Select Committee has received would, if looked into, have convinced them that the community is not in favour of *per capita* division. It is a pity that the Select Committee, with the exception of two members, did not take into account the community's opposition to the Bill or try to gauge the strength and intensity of it.

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Moreover, there is not a single supporter of the *per capita* division who has not at one time or other stated that he does not favour it. Mr. M. Velu Pillai, Deputy Conservator of Forests, and a co-opted member, has, in unmistakable terms, stated, in his answer to the questionnaire of the Enquiry Committee, that he is against *per capita* and in favour of *per stirpes* partition. This is what he says; —

"In the case of individual partition, property should be first divided between *taivazhies* and then sub-divided among the members of *taivazhi*; in a family consisting of two sisters and her children and two brothers, it should be divided....."

MR. M. VELU PILLAI (*Co-opted*): May I know where I have stated that?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): In the answer to the questionnaire prepared by the Enquiry Committee.

MR. M. VELU PILLAI (*Co-opted*): May I know in which year?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): In 1097.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether Mr Subrahmanya Pillai is prepared to answer questions now?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I am not prepared to answer any more questions now.

Mr. M. Parasu Pillai B. A., his brother, Assistant Excise Commissioner, holds the same view in his deposition and in his answers to the questionnaire. Mr. P. Madhavan Pillai, the father of the two, who was the first to raise the question of legislation for the Nanjanad Vellala community, writes to say that the community will be nowhere in the struggle for existence if the present Bill becomes law. Mr. S. Kumara Pillai, District Superintendent of Police, on leave, who had memorialised the Select Committee in favour of *per capita* division, has now changed his opinion. He has also written to me to that effect.

Further, the way in which partition has been effected among these *per capita* leaders is also very illuminating. Mr. T. M. Chidambaratanu Pillai, one of the signatories to the Enquiry Committee's Report in favour of *per capita* division, has recently effected partition in his family on the *per stirpes* basis. This is what he has done. I have got the document with me. There are two brothers and four sisters. One sister is dead. In the partition deed, the two existing brothers and three existing sisters alone are parties. But in the body of the document, it is plainly stated that the first sister has got two children, names are also given and the second sister three, and the fourth sister four. The party is Mr. Chidambaratanu Pillai, who was a member of the Enquiry Committee.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): May I know whether copies of this document are intended to be circulated among the members?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): No. It may be given the value which it deserves.

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MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): To the document or to what the member says?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): To what I say.

"ആറു സമഭാഗമായി വീതിച്ചതിൽ ഭാഗം ഒന്നിനു ൫൦,൦൬൪ പണത്തിന്റെ ധനവും ൬,൦൦൦ പണത്തിന്റെ കടവും ആയ വീതം വരുന്നതും ഈ രീതിയനുസരിച്ചു കടങ്ങൾ കൂടുതലായി ഒട്ടുക്കുന്നവക്ക് അതിനു തക്ക പട്ടിക വസ്തുക്കൾ കൂടുതലായും കടങ്ങൾ കുറച്ചിട്ടുക്കുന്നവക്കു വസ്തുക്കൾ കുറവായും ഭാഗിച്ചു കൊള്ളത്തക്കവണ്ണം തീർച്ചപ്പെടുത്തീട്ടുള്ള പ്രകാരം . . . . . ."

MR. KAYALAM PARAMESVARAN PILLAI (*Ag. Additional Head Sirkar Vakil*): May I suggest to the member that all these will have greater bearing on the amendments, if, and when, they are taken up. The question which is now before the House is whether the Bill should be recommitted or not.

PRESIDENT: The House will now adjourn and meet again at 3 o' clock.

The Council adjourned for lunch at 2-15 P. M. and re-assembled at 3 P. M.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Sir, Mr. Bhutalingam Pillai, another of such signatories, has also effected partition in his family on the same basis, a few months after the signing of the Report. I shall not refer to it in detail here, as it will be a waste of time.

It will thus be seen that *per capita* people are rare in the community. Doubtless, some of them do lip service to the *per capita* principle, but really effect *per stirpes* divisions in their own family.

Last, but not least, I have to mention that, in the two taluks of Tovala and Agastisvaram, wherein reside 95 per cent. of the Nanjanad Vellalas, the last Legislative Council election was fought out on this identical question. Mr. M. Sivatanu Pillai and myself, whose views on this subject are too well known, have been returned by a large majority. My rival, Mr. Tiruchittambalam Pillai, a *per capita* man, and a leader to boot, had to lose even his election deposit; and Mr. M. Sivatanu Pillai's rival, Mr. N. A. Sundaram Pillai, a popular medical practitioner, narrowly escaped a similar fate.

Sir, I have to reiterate therefore that the present provision in the Bill regarding partition is not quite acceptable to the community. I mention that, on account of their *makkathayam* instinct, partition is very common in the community so much so that the existence of a *tarwad* consisting of collateral *tavazhees* with the *karanavanship* in a member belonging to one of them is very rare; that partition in almost all cases is *per stirpes equally* among the members of the *highest*

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grade, both male and female, taking no account of the number of descendants of the females of such grades; that any deviation from this rule will be found to be for special reasons mentioned in almost all cases in the partition deeds themselves. In all my experience, I have not come across a single partition deed in which the *per capita* principle is clearly laid down. The method of division, as evidenced by documents, will clearly show that their method of inheritance is a combination of *makkathayam* and *marumakkathayam* laws, and that the right to maintenance of junior members, while living out of the *tarwad* was imported from pure *marumakkthayam* law and that it was done without fully understanding the family life and customs governing the Nanjanad Vellalas, even though this recent introduction has not hitherto made any appreciable impression on the community as a whole. It was mainly with a view to put a stop to this indiscriminate application of pure *marumakkathayam* law by courts of law to the Nanjanad Vellalas who have been and are essentially *makkathayees* that the community agitated for sending out a committee to investigate the customs of the community and that it was as a result of that agitation that the first Enquiry Committee came into existence. I regret to add that the net result of the work done by the second Committee as well as the Select Committee was not to find out what the customary law was, but what they thought it ought to be, by reference to the judgments of courts.

I am therefore of opinion that the Bill has not received due consideration at the hands of the Select Committee. The Select Committee did not lay any claim that they had ascertained the usage prevalent in the community regarding partition. The Report of the Select Committee is absolutely of no use to the progress of this Bill which is a piece of social legislation. I hold it highly necessary that documentary evidence should be taken.

Sir, during the interval, I was told that I had been too vehement in referring to the Select Committee. I am really sorry, Sir, that I made such an impression. On behalf of a community which is quite backward in education and purely agricultural, I appeal to this House to accept my motion. For, by doing so, this House will be doing a service to my community. Sir, I also beg to submit that this is a piece of social legislation undertaken by Government. Under these circumstances, I hope Government would also sympathetically consider the proposal that I have put before the House. If my motion is accepted by this House and the mover of the Bill, I hope that, by sending back the Bill to a Select Committee, it will be possible to arrive at some acceptable conclusion whereby the community will be benefited. Any amount of time spent on a further investigation of this matter will, I think, not be wasted. Of course, the work of the committee may take three or four months; and I am prepared, if the Select Committee does not send up its report by that time, to abide by the decision of the Select Committee already arrived at and proceed with the Bill. With these words, I commend my proposal to the acceptance of the House.

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MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): May I know from Mr. Subrahmanya Pillai whether the question of partition is the only one with reference to which he wants a re-committal to the Select Committee?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): That is the most important point.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Is there anything else connected with this Bill that has to be referred again to the Select Committee?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I have got one or two other points also. The Committee may be able to go into the question of monogamy and other things also. If it is sent back, I think it is not advisable to commit ourselves with regard to one portion alone.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): That is a large question. May I know whether he has not tabled amendments for discussion bearing on those matters?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Yes, I have. Unless documentary evidence comes to support my contention, I am not sure whether the House will really understand the real custom prevalent in the community.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): So what the member means is that the Select Committee to be appointed should take evidence on this question again and come to a conclusion?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Only documentary evidence.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): So far as you are concerned, you may restrict it to documentary evidence.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): That is my idea.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): On the existing evidence, does the member think that no purpose would be served by referring to a Select Committee?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Yes.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Does the member know how many witnesses were examined by the Ezhava Law Committee?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I do not know.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Is the member aware that only 800 and odd witnesses were examined by the Ezhava Law Committee?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): May be.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Does the member think that the proportion of the witnesses examined by the Nanjanad Vellala Committee is higher than the proportion of witnesses examined by the Ezhava Law Committee?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I speak only with regard to my community.

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MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): May I know from the member on what basis the amount of maintenance is ascertained in the case of the Nanjanad Vellala community. I wish to know whether it is on the principle of *per stirpes* or *per capita*.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I do not think any definite principle is followed with regard to that matter. It depends upon the merits of each case.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): So, does he mean to say that it is not on *per stirpes* system?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): No.

MR. N. V. JOSEPH (*Parur*): May I know from the member whether the documents produced before the Select Committee were not examined at all or were not examined adequately?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I say that they were not examined by the Select Committee.

MR. N. V. JOSEPH (*Parur*): It is stated in the Select Committee Report as follows:

"Messrs. Subrahmanya Pillai and Chidambaratanu Pillai among us took opposite views and have done their best to present to us their different view-points. We have heard deputations from both parties on this subject. We have read the various memorials presented to us and we have also examined the documents produced before us as establishing their respective contentions."

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): I have qualified the wording and have described that what actually took place there was not a proper examination.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*): മിസ്റ്റർ സുബ്രഹ്മണ്യപിള്ള മരുമക്കത്തായം എന്ന സെക്കൻറ് സെക്ഷൻ ഫർസ്റ്റ സബ് സെക്ഷനെ ആക്ഷേപിച്ചിട്ടുണ്ടോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): The definition is quite correct.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*): ക്ലാസ് (൨) സബ്സെക്ഷൻ (൨) കണ്ടിട്ടുണ്ടോ.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): There is nothing wrong in the definition.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*):

"*Tarwad* means and includes all the members of a *marumakkathayam* family with community of property."

അതു ശരിയാണോ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): As a definition I do not object to it.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*): മിസ്റ്റർ സുബ്രഹ്മണ്യപിള്ള ഇതിൻമുമ്പു ഈ സംസ്ഥാനത്തുള്ള മരുമക്കത്തായക്കാരുടെ ഇടയിലുള്ള ഭാഗത്തെ സംബന്ധിച്ചു ഒരഭിപ്രായം പറഞ്ഞിട്ടുണ്ടോ?

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MR. K. K. THOMAS (*Kottayam*) : Sir, I rise to a point of order. I do not think cross-examination is allowed by the rules.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : I am a new member. I have not yet gone through all the rules. I came only just now from a distant place. I got the rules only yesterday or the day before yesterday.

PRESIDENT : Please do not subject another member to a course of cross-examination.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) ; മരുമക്കത്തായക്കാരുടെയിടയിൽ ഇന്നപ്രകാരമാണ് ഭാഗംവേണ്ടതെന്ന ഒരഭിപ്രായം ഈ കൌൺസിലിൽ പുറപ്പെടുവിക്കാനിടയായോ ?

I will read out if necessary.

൯൭ മീനം ൨൭- ബുധനാഴ്ച്ചദിവസം ദിവാൻജി അവർകളുടെ മുറിയിൽവച്ചുകൂടിയ യോഗത്തിൽ "സംസ്ഥാനത്തെ മരുമക്കത്തായികളുടെയിടയിലുള്ള ഭാഗത്തെ സംബന്ധിച്ച ഒരഭിപ്രായം പറയാനിടവന്നതിൽഞാൻ സന്തോഷിക്കുന്നു" (പ്രധാനഭാഗംമാത്രമേ വായിച്ചു ബോദ്ധ്യപ്പെടുത്തുന്നുള്ളൂ) മരുമക്കത്തായത്തിന്റെ പ്രധാനഭാഗത്തെ ഉപേക്ഷിച്ചിരിക്കുന്നസ്ഥിതിക്ക് ഇതിനുള്ള ഏകമാർഗ്ഗം മക്കത്തായം സ്വീകരിക്കയാണ് വേണ്ടതെന്ന പറഞ്ഞില്ലെ ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : അതു മരുമക്കത്തായത്തിനുവേണ്ടിയാണു പറഞ്ഞിട്ടുള്ളത്.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : ഈ സംസ്ഥാനത്തുള്ളവർ മരുമക്കത്തായികളാണെന്നറിയാമോ ?

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*) : മക്കത്തായികളും മരുമക്കത്തായികളും ഉണ്ട്.

MR. M. SIVATANU PILLAI (*Tovala*) : Sir, it is with very great pleasure and with very great diffidence that I second the motion brought forward by Mr. M. Subrahmanya Pillai. Excepting certain expressions with reference to the proceedings of the Select Committee, I fully endorse the sentiments expressed by Mr. Subrahmanya Pillai. It is true that this Bill, relating to the Nanjanad Vellala community, to which I have really great pride to belong, has been attracting the attention of Government for some years past. There is no doubt about that. Many years have passed since the necessity for codifying the customs obtaining in the community as to marriage, partition and intestate succession, arose. We are really grateful to Government for the keen interest

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[Mr. M. Sivatanu Pillai.]

that they have taken in the welfare of this small community. I may just remind the House of the stage at which the Bill was introduced in the last Council. In the last Council, there was only one elected member belonging to our community. Even that member was elected by the Tovala taluk which formed only half of that constituency. My friend, Mr. Subrahmanya Pillai from North Travancore, has been severely cross-examining Mr. M. Subrahmanya Pillai. I understand his real spirit. At the very outset, I may assure the House that I do not make my stand upon mere words. Whether it is pure *makkathayam* or pure *marumakkathayam*, I do not very much care. I request the House to permit me to take my stand on the customs prevalent at present among the majority of the community. What I just wish to emphasise is that, during the days of the Select Committee of the last Council, there was only one elected member belonging to our community, and that member was returned by a constituency which consisted of Tovala and Kalkulam. The majority of the people of Tovala are Nanjanad Vellalas; but in Kalkulam, there are practically as many Nairs as Nanjanad Vellalas. Moreover, for the other Nanjanad Vellala constituency, *viz.*, Agastisvaram, the elected member in the Council was not a member of the Nanjanad Vellala community. It was Mr. P. V. Daniel. Government thought it necessary to co-opt a member just to give information as to details and also to expedite the passing of the Bill. My friend Mr. M. Subrahmanya Pillai was the co-opted member in the last Council. When the Bill was introduced in the Council, Mr. Subrahmanya Pillai made the Council understand that it was really mistaken with regard to the provision relating to partition. Subsequently, in due course, it was referred to a Select Committee. The Select Committee really conceded that there was some difficulty with regard to the provision, relating to partition, in the draft Bill. I believe, that is the reason why the Select Committee thought it absolutely necessary to go into the several documents to find out the method of partition obtaining in the community. The Nanjanad Vellala community has got fundamentally differentiating features about it, features quite distinct from the Nair community which is governed by pure *marumakkathayam* law. For making this statement, I have the following reasons.

In the first place, as the House will see from the Report of the Select Committee, there are partitions frequently taking place in the community. I believe my friend, Mr. Subrahmanya Pillai from Vaikam, will admit that, if there be any real *marumakkathayam* instinct in the community, there would not be such frequent partitions among the members of the community.

The second reason to show that there are fundamentally differentiating features between the Nanjanad Vellala community and the Nair community, is the principle of recognising the rights of the children of a deceased male member. I believe the Chair will give me so much indulgence as to allow me more time than is allowed by the Rules. Because, I find that many of my friends on this side of the House have

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not sufficiently understood the fundamental differentiating features between my community and the Nair community. The *Ukantudama* is the remnant of the system which once obtained among the Nanjanad Vellalas who were *makkathayees* as is seen from the Enquiry Committee's Report and the *State Manual*. Originally, therefore, the Nanjanad Vellalas were *makkathayees*. Out of sheer exigencies of the situation, they had to graft certain customs from the *marumakkathayam* law inasmuch as they were governed by a Sovereign following the *marumakkathayam* law. Nevertheless, they were not prepared to throw over-board all their original customs. The *Ukantudama* and *Nankudama* are only remnants of the original customs of this community in regard to their system of inheritance. *Ukantudama* is the right of the children of a deceased male member to a particular portion of his property, irrespective of the number of female members in the family. The male members *alone* are taken into account in calculating the *Ukantudama*. That is what has been stated in 4 T. L. R. Mr. Chellappa Pillai, who was the deciding Judge, was a Tamilian. He has stated there that *Ukantudama*, when interpreted, meant 'gift out of love.' That was originally recognised as one-half of that share to which male members alone were naturally entitled.

MR. K. SIVARAMA PANIKKAR (*Shertallai*): Was *Ukantudama* ever given except in the shape of money?

MR. M. SIVATANU PILLAI (*Tovala*): Yes.

MR. K. SIVARAMA PANIKKAR (*Shertallai*): Was it given in the shape of property?

MR. M. SIVATANU PILLAI (*Tovala*): Certainly; because it was in the form of a charge on the family property.

MR. K. SIVARAMA PANIKKAR (*Shertallai*): Could it not be taken as compensation for the obsequies done for the deceased?

MR. M. SIVATANU PILLAI (*Tovala*): No; Obsequies for deceased male members by their sons are known only among *makkathayees*.

MR. K. SIVARAMA PANIKKAR (*Shertallai*): Supposing the last member of a Nanjanad Vellala family dies leaving behind him his son, what will become of his property?

MR. M. SIVATANU PILLAI (*Tovala*): I will come to the legal aspect of the question later.

MR. K. SIVARAMA PANIKKAR (*Shertallai*): Will it not be escheated to Government?

MR. M. SIVATANU PILLAI (*Tovala*): It will be escheated, if he died without making a will.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): May I ask Mr. Sivatanu Pillai whether it is his opinion that, in the case of pure *marumakkathayees*, the children do *not* perform obsequies of the father?

MR. M. SIVATANU PILLAI (*Tovala*): I do not say so.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Is the member aware that, among Nairs, it is usual for children to perform obsequies to the father?

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MR. M. SIVATANU PILLAI (*Tovala*) : May be.

In the same way, *Nankudama* also is the right of the widow, *Yapia Nankudamai* arises in a case where a male member of a Nanjanad Vellala *tarwad* is allowed to be identified, in all matters of inheritance, with his children. When a male member expresses his desire to be identified with his children, the other members of the *tarwad* allow it and he is to abide by the *makkathayam* system. I am only just trying to show that there are, even now, remnants of the *makkathayam* system by which these people were originally governed. Even to-day, in marriage *pandals*, we have, what is called, the *stridhana* given to the bride by her father.

MR. K. SIVARAMA PANIKKAR (*Shertallai*): May I know whether such *stridhana* is given by the uncle to his niece or by the father to his daughter?

MR. M. SIVATANU PILLAI (*Tovala*): There is no fixed principle in that matter. Both give *stridhana*.

MR. K. SIVARAMA PANIKKAR (*Shertallai*) : The father may give *stridhana* out of affection. But is it not usual for the uncle to give it to the niece ?

MR. M. SIVATANU PILLAI (*Tovala*) : Whoever is prepared to give *stridhana* will give it.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : Let me ask Mr. Sivatanu Pillai one question. ഒരച്ഛൻ മകൾക്കു സ്ത്രീധനംകൊടുക്കുന്നതിനു തറവാട്ടുസ്വത്തു് എഴുതികൊടുത്തിട്ടുള്ളതായി അറിയാമോ?

MR. M. SIVATANU PILLAI (*Tovala*) : എഴുതിക്കൊടുത്തിട്ടുണ്ടെന്നു തന്നെ പറയുന്നു.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : അങ്ങനെ ആധാരം എഴുതീട്ടുള്ളതായി ഒരു ദൃഷ്ടാന്തം കാണിക്കാമോ?

MR. M. SIVATANU PILLAI (*Tovala*) : കാണിക്കാം. പ്രമാണം ഉണ്ടു്.

There is an express statement in a deed to the effect that the family property should be divided "excepting a particular portion of it set apart as *stridhana*."

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : ഈ പ്രമാണം കോടതിയിൽ വന്നിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*): ഉണ്ടു്. അതുകൊണ്ടാണു് ഞാൻ ഈ മോഷ്ണെ സപ്പോർട്ടു് ചെയ്യുന്നതു്.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*) : ഈ പ്രമാണം അനുസരിച്ചു കോടതികളിൽ നിന്നും വിധി കൊടുത്തിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : കോടതികളിൽ നിന്നും അങ്ങനെ കൊടുക്കാത്തതു കൊണ്ടാണു് ഞങ്ങളുടെ കസ്റ്റം എങ്ങനെയിരിക്കുന്നു

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എന്ന ഗവൺമെൻറു അനേപ്ഷിക്കണമെന്ന പറയുന്നതു. കോടതികളിലെ ജഡ്ജിമെൻറു വിപരീതമായതുകൊണ്ടാണ് ഞങ്ങളുടെ മനസ്സു പോലെ ഒരു ബിൽ ഉണ്ടാക്കാനിടയായതു.

MR. T. KUMARA PILLAI (*Kalkulam cum Vilavankod*) : ഇതുവരെ ഏതെങ്കിലും ഒരു ദൃഷ്ടാന്തം പറയത്തക്കവണ്ണം കോടതികളിൽനിന്നും വിധി വല്ലതുകൊടുത്തിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*): പ്രമാണം ഉണ്ട്.

In the last Committee, Sir, there were two members belonging to this community, one co-opted and the other representing a constituency only half of which formed Tovala. What I want to emphasise is that, as pointed out by Mr. M. Subrahmanya Pillai and as is well known to such of the members of the present Council as have had the credit to be returned again as members now, the community is behind us.

MR. N. KUMARAN (*Nominated*) : Are Messrs. Sivatanu Pillai and M. Subrahmanya Pillai prepared to resign their membership in the present Council and to contest a fresh election to be conducted on this basis?

MR. M. SIVATANU PILLAI (*Tovala*) : I accept the challenge of Mr. Kumaran very gladly. I am not present here just to give some vain hopes.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : കൌൺസിലിൽ മെംബറായിട്ടു ഇന്ന ഉദ്ദേശത്തോടുകൂടിയാണു നില്ക്കുന്നതെന്നു കാണിക്കുന്ന മാനിഫസ്റ്റോ പബ്ലിഷ് ചെയ്തിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : ഇല്ല; അതിൻെറ അത്ഥംകൂടി അവക്കറിഞ്ഞുകൂടാ.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : മലയാളത്തിൽ വിജ്ഞാപനം എന്നുണ്ട്. ആ സാധനം നിങ്ങൾ പ്രസിദ്ധപ്പെടുത്തീട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : ഇല്ല.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : സമുദായത്തിൻെറ അഭിപ്രായം ഇന്നവിധത്തിലാണെന്നു ധരിച്ചിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : Nearly 80 per cent. of the voters in my constituency belong to my community.

MR. A. K. PILLAI (*Karunagapalli*) : May I know whether the voters were *karanavars* or *anandaravars*?

MR. M. SIVATANU PILLAI (*Tovala*) : Both put together. *Karanavars* are only few. You can understand the number of partitions that take place in my community when I say that at least 50 per cent. of the members of my community possess property in their own names. Partition is so frequent. Invariably the eldest brother happens to be the *karanavan*. That is the result of frequent partitions. In *marumakkathayam* communities, the maternal uncle is generally the *karanavan*.

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MR. K. K. THOMAS (*Kottayam*): What is the total strength of your community in the two taluks of Tovala and Agastisvaram?

MR. M. SIVATANU PILLAI (*Tovala*): In my constituency, I believe the number of voters will range between two and three thousand.

MR. K. K. THOMAS (*Kottayam*): That is not the answer to my question. What is the total population of those two taluks?

MR. M. SIVATANU PILLAI (*Tovala*): If I am given time, I will just refer to the *Census Report*, which it is open for the member also to do. There are about thirty thousand in Nagercoil. In my constituency, we are certainly more than a lakh. We are now here with the distinct mandate given to us by the majority of the community. No doubt, there is also the opposing party among us. We are really pleased to see that two gentlemen, belonging to the opposite party, have been co-opted here as members. We fully appreciate the good intentions of Government, I am really inclined to feel that there was not sufficient representation and adequate presentation of details before the members of the last Council and the last Select Committee so as to make them understand the fundamental differentiating features in my community which do stand in need of special provision in the Bill. It is seen from the report that some sort of examination was conducted by the Select Committee. They say that some deeds showed *per stirpes* partition while others showed *per capita* partition.

It does not necessarily follow that *per capita* division alone should be adopted. I for one fail to understand the logic. Does it not behove the Committee members to find some method to provide for all these different methods of partition obtaining in such documents as were examined by them? So the Select Committee themselves accepted the principle that there was the necessity to examine documentary evidence as to the principle underlying the partition itself, inasmuch as there are ever so many partition deeds. Nearly 700 partition deeds of which nearly 500 were regarding *per stirpes* and 200 regarding other methods were referred to them. If on a persual of these documents, the Select Committee has come to the conclusion that the underlying principle as evidenced through the documents was found to be *per capita*, I can understand that. But instead of saying that, the ysay:

> "There are partition deeds showing *per stirpes* and there are partition deeds showing *per capita* partition and there are again documents which establish neither the one nor the other."

If that is the real thing, I believe the Select Committee members ought to have made a provision in the Bill satisfying all these cases. In this connection, I may just remind the House of the words of Dewan Bahadur M. Krishnan Nair at the time when the Select Committee's report on the Christian succession Bill was discussed. Of course, there was the opposition there. Even then he says: "We have, as far as possible, recognised the opposition." Now, as the Bill stands, after the whole discussion is over by the House, almost all the oppositions

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have to be recognised. The Bill has to be allowed a second time. What I want to emphasise is that the opposite views should be recognised, particularly when a social legislation is launched. I do not want that this House, consisting a majority of the members of other communities, should dominate over the minority. This is a case where a community, simply because their customs and system of inheritance have been ignored and the pure *marumakkathayam* system has been imported into the system by act of law, think it necessary to move the Government to codify what all things now obtain. So what I just wanted to emphasise is this. This is a new Council. Here are four members of the community as against two in the last Council. You will find from the Muddiman Committee's Report that, in all social legislations, there must be a majority of opinion of the representatives of the community which is to be held responsible for enacting a law. The Muddiman Committee Majority Report makes pointed reference to the effect that, in all social legislations, the majority of that community which will be affected must be represented in the responsible body which is to enact a law. This Council consists of four members belonging to the same community, as opposed to two members of the last Council, and I want to satisfy myself, and at the same time my constituency, that I have endeavoured to the utmost that this is the majority opinion, that this is the method of partition obtaining in the community. That is all that I want to do and I have done my duty. Some of the members of this House were simply sympathetic towards the community but have not understood the real genesis of *Ukantudana* and *Nankudama*. I appeal to the House that I must be given time so that I may at least have the satisfaction of getting an opportunity to convince the co-opted members, with the aid of documents which have been produced before the Select Committee. And I may assure the members of this House that, after discussion in the Select Committee, I am prepared to abide by the final decision that may be come to by the Select Committee, without raising a single dissentient voice. So I want only time, whether it is one month or two months, or if the Chair will permit, the whole House may now go into Committee.

One of the members raised an objection that the Select Committee has already considered it and that it is not right for the Council again to consider it. I only wanted an opportunity to be heard with the documents and not to present any oral evidence. I am concerned with the documents presented before the last Select Committee by Mr. Chidambaratanu Pillai. With that real ambition, I despair of success of any attempt at all here. So, if the House is in a mood not to listen to me—it is only, after all, a question of delay at the most of two months—I think I may have to feel that my position here as a representative who has been sent here will be of no avail at all for the further progress of the Bill, because the persons who returned me did give me a particular mandate to fight out this Bill. Let the members understand the real customs of the community and let them codify those customs. I do not want to incorporate the individual judgment of each individual

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member who may not belong to the community adjudicating cases with reference to my own community. I want the Government to understand the customs of the community and codify them. That is the mandate I have received. And it is for that purpose I want a Select Committee. I have got a case, and I am confident I can argue it out successfully with the Select Committee. Four members of the community are here. Any opinion arrived at as the result of the Select Committee threshing the question would be really worth taking and I hope the House will accept this amendment.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Will Mr. Sivatanu Pillai suggest the grounds for this House to ignore the reports of the Enquiry Committee and the Select Committee? On what grounds shall we be justified in saying that these two reports are false?

MR. M. SIVATANU PILLAI (*Tovala*): I do not say they are false. I say that the very fact that the Select Committee considered the desirability of seeing documentary evidence goes to prove that the work of the Enquiry Committee was not at all satisfactory, was not at all adequately presented before this House. The very fact that the Select Committee which was asked to go into that Bill found it necessary to examine the documents in order to find out the real custom and therefore they requested the two members representing the opposite views to produce documents in support of their contention shows that the Select Committee accepted the defect in the Enquiry Committee's report—

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): So does he mean to ask the House to ignore the Enquiry Committee's Report on the ground that it has been unsatisfactory?

MR. M. SIVATANU PILLAI (*Tovala*): I am sorry he has not understood me.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): I believe on that ground we cannot ignore the report.

MR. M. SIVATANU PILLAI (*Tovala*): The Select Committee admitted the desirability ofseeing documentary evidence which was not done by the Enquiry Committee; and in fact they did seek documentary evidence.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Is he aware that the Select Committee, which admitted the documents, reported that, even after the perusal of those documents, they were satisfied that *per capita* system was prevalent?

MR. M. SIVATANU PILLAI (*Tovala*): Certainly not; I shall read the portion.

"We have discussed and considered the various points placed before us and we think that *per capita* division is the just and more reasonable course to adopt. If the documents produced showed a definite usage as to *per stirpes* partition, we would have hesitated to accept this view. But the documents do not prove any usage at all. There are documents evidencing *per stirpes* partition, there are documents evidencing *per capita* partition and there are again documents which establish neither the one nor the

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other. We are therefore unable to find that a definite usage with regard to *per stirpes* partition has been established so as to affect the vested rights of the members of a *marumakkathayam tarwad.*"

That is the thing that stood in the way of trying to find a way to reconcile.

MR. M. VELU PILLAI (*Co-opted*): What is the conclusion arrived at?

MR. M. SIVATANU PILLAI (*Tovala*): That is in the report itself, and my friend can see it.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): The Select Committee say that they are of opinion that "the unanimous report of the Enquiry Committee should be followed".

MR. M. SIVATANU PILLAI (*Tovala*): That is why I speak in refutation of that.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): The committee were not able to arrive at a conclusion as regards usage by the reading of the documents produced, as would be evident by the portion just read.

MR. M. SIVATANU PILLAI (*Tovala*): They did not inspect the documents at all. That is what I ask for.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Does the member therefore want us to conclude that the statement in the report is not true?

MR. M. SIVATANU PILLAI (*Tovala*): I do not say that it is not true. I say it was not sufficiently understood. I want time to make the members understand my objections in the proper light. I never said that it is untrue or anything of that sort. All that I said was that they had not sufficient and adequate representation so as to enable them to understand the real perspective.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Whose fault was it that sufficient representation was not made before them?

MR. M. SIVATANU PILLAI (*Tovala*): At any rate, it was not the fault of the poor dumb members of my community.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): I believe the member was not dumb at that time.

MR. M. SIVATANU PILLAI (*Tovala*): Beg your pardon.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): I believe Mr. Sivatanu Pillai was at that time aware of the fact that the Enquiry Committee had made the report that *per capita* division was the one prevalent in the community.

MR. M. SIVATANU PILLAI (*Tovala*): I believe he will be charitable to me; and I may assure him that whatever can be done has been done by me under the circumstances.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): If all that can be done had been done before the Select Committee and if the Select Committee could not find that *per stirpes* system could be advocated, on what ground, I ask, should we disregard that report?

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MR. M. SIVATANU PILLAI (*Tovala*): I do not want to disregard the Committee. I say I have got a strong case; and I shall be able to satisfy them if they prepared to hear me; at least, I shall have the satisfaction of having attempted to convince them.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): What guarantee is there that, even if a third chance is given, the real wish of the community will be reflected in the report?

MR. M. SIVATANU PILLAI (*Tovala*): The guarantee will depend upon the responsibility of this House. I suppose my friends on this side of the House will very well feel the responsibility.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): Am I to take it then that the members of the Select Committee did not feel themselves responsible for the report?

MR. M. SIVATANU PILLAI (*Tovala*): I do not say that. I do not say anything absolutely regarding the inclination or predisposition on the part of the members of the Select Committee. I feel that the question was not presented before them in the full light and I feel at the same time that, if I am given time, I may be able to carry conviction to the Committee. That is my position. I am the last person to attribute partiality to the members of the Select Committee.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): I believe Mr. Sivatanu Pillai understands the delicacy of the question. So I wish to know from him whether the report of the Select Committee that has just been taken into consideration can be ignored only on the ground that a third chance must be given to the Vellala community.

MR. M. SIVATANU PILLAI (*Tovala*): Certainly not.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): That is to say, the only ground upon which the reconsideration was asked for is that a third chance may be given.

MR. M. SIVATANU PILLAI (*Tovala*): No. There is a strong opposition and that was recognised even by the Select Committee. It is evidenced by those who are present here, representing the members of my community. The Government themselves know that there is a very strong, recognisable and accountable opposition against the provisions of the Bill particularly with reference to partition. I ask the House in all its grace to accept the opposition and I want to know whether there is no provision to accept the opposition. I may ask this part of the House whether it is really justifiable to ignore such opposition.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): May I ask whether all that he wants is that the documents produced by his party before the last committee should be re-examined by a new committee? What exactly is it that Mr. Sivatanu Pillai wants the new committee to do?

MR. M. SIVATANU PILLAI (*Tovala*): Whatever can be legally and constitutionally done should be done by the new Committee.

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MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : That is not the answer. We want a definite idea as to what the future Select Committee should do, particularly with reference to the question of partition.

MR. M. SIVATANU PILLAI (*Tovala*) : They must re-examine the particular clause regarding partition.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : Is it to re-examine the documents produced before the last committee because he thinks that the examination of them by the last committee was not satisfactory?

MR. M. SIVATANU PILLAI (*Tovala*) : I can assure the member that the Select Committee need not at all go into oral evidence, because I am not a believer myself in oral evidence.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : Does he know that both the parties argued their case before the Select Committee with the help of Vakils?

MR. M. SIVATANU PILLAI (*Tovala*) : Certainly, I know that. I feel that, if I am given one chance more, I will be able to carry conviction to the members of the Select Committee. I was one of the spokesmen though I was not on the Select Committee, and I represented the matter to the Select Committee.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : The idea then is that the Vakils engaged by you did not argue the case before the last Select Committee as you might do.

MR. M. SIVATANU PILLAI (*Tovala*) : That is not what I said. I think I will be better equipped to present the case than a Vakil. My friend Mr. Paramesvaran Pillai himself will concede that a man who feels strongly on the question will be able to argue better.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : I demur. I do not hold that view ; in fact I think the man who feels will even spoil his case.

MR. T. J. MATTHEW (*Canganachery* cum *Peermade*) : I want some information. It was said that *ukantudama* was a share of the father's right in the property. I wish to know whether that share is ascertained after ascertaining the share of the father.

MR. M. SIVATANU PILLAI (*Tovala*) : Certainly.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*) : And when that ascertainment is made, is it on the *per capita* system or the *per stirpes* system ?

MR. M. SIVATANU PILLAI (*Tovala*) : Only the co-parcenary male members are taken into account and the whole *tarwad* property is divided equally among those members and the *ukantudama* right is calculated as half of each share and afterwards reduced to one-fourth. Certainly, this is not *per capita*. I wish to make the point quite clear. Suppose there are two brothers and four sisters, and each sister has two children. Suppose also one of the brothers dies leaving children.

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The children of the deceased brother get each an *Ukantudama* disregarding the number of sisters and even the sisters' descendants. The male members alone are taken into account. The whole property is divided into two equal shares. One share is taken out, of which half was given to each as *Ukantudama* right. There is no fixed rule as to the result of the gradual importation of the *marumakkathayam* instinct.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Is not the *Ukantudama* one-tenth according to case law?

MR. M. SIVATANU PILLAI (*Tovala*): But that is only case law.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): In regard to *Ukantudama*, suppose the father who dies is one of three sons of his mother and two of their uncles are living.

MR. M. SIVATANU PILLAI (*Tovala*): That is to say they are the deceased father's brothers.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): I mean the *karanavan*.

MR. M. SIVATANU PILLAI (*Tovala*): *Ukantudama* has reference only to the *karanavan's* property. My friend does not allow me to explain and has not the patience to hear me. That is why I requested him to give me time to explain everything.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): I am entitled to know something about that.

MR. M. SIVATANU PILLAI (*Tovala*): Yes.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): ഉകന്തുട മയവകാശം കണക്കാക്കുന്നതിൽ ഏതെങ്കിലും അവസരങ്ങളിൽ സ്ത്രീകളെ കൂടി ചേർക്കാറുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*): ശേഷക്കാരുടെ നിലയിൽ സ്ത്രീകളെ ചേർക്കാറുണ്ട്.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): സ്ത്രീകൾക്കും ഉകന്തുടമാവകാശം കൊടുക്കാറുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*): ഒരിക്കലും ഇല്ല. സ്ത്രീകൾക്ക ഉകന്തുടമയവകാശമില്ല.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): ഒരു കുടുംബത്തിൽ മൂന്നു പുരുഷന്മാരും ഒരു സ്ത്രീയുമുണ്ട്. ആ സ്ത്രീയുടെ മകൻ മരിച്ചുപോയി. അയാളുടെ ഉകന്തുടമാവകാശം കണക്കാക്കുന്നതിന ആ സ്ത്രീയെക്കൂടി ചേർക്കുന്നില്ലേ?

MR. M. SIVATANU PILLAI (*Tovala*): ഒരിക്കലും ഇല്ല. ആൺമക്കൾക്ക മാത്രമെ കണക്കാക്കിക്കൊടുക്കയുള്ളു.

MR. T. KUMARA PILLAI (*Kalkulam* cum *Vilavankod*): മൂന്നു സഹോദരന്മാരും ഒരു സഹോദരിയും ഒരു കുടുംബത്തിൽ ഉണ്ടെന്നു വിചാരി

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ക്കുക. ആ സഹോദരിക്കു നാലു കുട്ടികളും ഉണ്ട്. അതിലൊരാൾ മരിക്കുമ്പോൾ അയാളുടെ കുട്ടികൾക്ക് ഉകയുടമ കൊടുക്കുന്നതിനു ആ സ്ത്രീയെക്കൂടി കണക്കാക്കുകയും അവർക്കു എത്ര കുട്ടികൾ ഉണ്ടോ അത്രയും വീതിയ്ക്കുയും ചെയ്തിട്ടല്ലയോ കൊടുക്കുന്നത് ?

MR. M. SIVATANU PILLAI (*Tovala*): സ്ത്രീകൾക്ക് എത്ര ആൺ മക്കൾ ഉണ്ടെന്നു കണക്കാക്കിക്കൊടുക്കുകയാണു ചെയ്യുന്നത്.

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*) : May I know whether he wants the whole Bill to be considered or only those sections which relate to partition ?

MR. M. SIVATANU PILLAI (*Tovala*): I am only particular about partition.

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*): Does he think that it is not possible to convince the House of the advisability of having a *per stirpes* partition while the amendments relating to this question are considered ?

MR. M. SIVATANU PILLAI (*Tovala*) : When I despair of my ability to convince the House now, I may not be justified in taking that course at all. I freely concede that the Select Committee need go only into the question of partition. I am plain there.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : അന്നത്തെ ലാ മെമ്പറും ഇന്നത്തെ ഡിപ്യൂട്ടിപ്രസിഡൻറും ആയ മിസ്റ്റർ സുബ്ബയ്യർ ആയിരുന്നു സെലക്ട് കമ്മറ്റി പ്രസിഡൻറു എന്ന് ധരിച്ചിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : എന്നാണു തോന്നുന്നത്.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : ബിൽകമ്മറ്റിയുടെ റിപ്പോർട്ടുവായിച്ചിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : I am not in the witness box and deprecate being cross-examined.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : എൻകയറി കമ്മിറ്റിയിൽ ആകമാനം നമ്പൂ സാക്ഷികളെ വിസ്തരിച്ചിട്ടുള്ളതായി ഓർക്കുന്നുണ്ടോ ?

MR. M. SIVATANU PILLAI (*Tovala*) : കുറച്ചു ഓർമ്മയുണ്ട്.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : ഈഴവ കാരണവന്മാരും ഈഴവ അനന്തിരവന്മാരും ആണ് വിസ്തരിക്കപ്പെട്ടിട്ടുള്ളതെന്നു ആ കമ്മറ്റി റിപ്പോർട്ടിൽ ഉള്ളതായി ഓർക്കുന്നുണ്ടോ ?

MR. M. SIVATANU PILLAI (*Tovala*) : അങ്ങനെയായിരിക്കാം.

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MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : കാരണവന്മാരിൽ നിന്നും വ വ പേർ അളോഹരിഭാഗത്തിന് മൊഴികൊടുത്തിട്ടുള്ളതായി അ റി പ്പോർട്ടിൽ കണ്ടിട്ടുണ്ടോ?

MR. M. SIVATANU PILLAI (*Tovala*) : ഒരിക്കലുമില്ല.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : ന ഥ വ സാക്ഷികളെ വി സ്തരിച്ചിട്ടുണ്ട്. അതിൽ ര ര ര പേർ പെർക്യാപ്പിറാപാർട്ടീഷനും ര വ പേർ തായ്വഴിക്കും മൊഴികൊടുത്തിട്ടുള്ളതായി കാണുന്നുണ്ട്. അതിൽ ഏതു പേർ അനന്തിരവന്മാരുള്ളതിൽ . . . . .

MR. M. SIVATANU PILLAI (*Tovala*): മെമ്പർ ഇപ്പോൾ വായിക്കുന്നതുപോലെ പത്രങ്ങളെ ഞാൻ ഒട്ടും വകവയ്ക്കാറില്ല.

MR. S. SUBRAHMANYA PILLAI (*Co-opted*) : റിപ്പോർട്ടിൽ ഇങ്ങനെ കാണുന്നുണ്ട്. ര ര ര പേർ പെർക്യാപ്പിറാപാർട്ടീഷനു വേണ്ടി മൊഴി കൊടുത്തിട്ടുള്ളതായി പറയുന്നു.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*) : I want to know the custom with regard to one incident. Suppose there are two sisters in a *tarwad* and one sister has four sons and another sister has only one son who has some children. I want to know whether the *Ukantudama* to be given to these children will be given by ascertaining the share of the single son and, in ascertaining that, whether the whole property is divided into two or into five.

MR. M. SIVATANU PILLAI (*Tovala*) : I will be immensely pleased to have Mr. T. J. Matthew in the new Select Committee, so that I may be given ample opportunities to convince him. I do not quite catch him.

MR T. J. MATTHEW (*Changanachery* cum *Peermade*) : I shall repeat the question. In a *tarwad*, there are two sisters. One has four sons and the other has only one son. Altogether there are five male members in the family. Then the son of the sister who has only one son marries. Subsequently, he dies leaving children. Then the question arises as to giving *Ukantudama* to his children. When that question arises, I wish to know whether that deceased's share is ascertained by calculating the whole family property and estimating *Ukantuduma* on one-half of the *tarwad* property or on one-fifth of the *tarwad* property.

MR. M. SIVATANU PILLAI (*Tovala*) : This illustration seems to be strange, because, when there are only sisters and their children, the instinct of the community is to get themselves divided, unless there is one common brother. Even if there is such a case, on account of the *marumakkathayam* instinct, I say it has got to be divided into five equal portions and one-tenth given as *Ukantudama*. But I will simply ask them to go back to the old system instead of having one-tenth.

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MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): He said that, if a *karanavan* died, there will be partition. Suppose the *karanavan* is alive. Then is the *Ukantudama* calculated on one-third or one-sixth?

MR. M. SIVATANU PILLAI (*Tovala*): The rest of the family property will be divided into two equal portions and out of that one-fourth or one tenth will be given. This varies according as it is found in the judgment. It may be divided into five equal shares and the children of the deceased brother or half-brother may get one-tenth of his share.

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): Sir, I did not want to take part in the discussion with reference to the amendment for recommitting the Bill to the Select Committee, nor am I going to speak on that particular matter. But some charges have been levelled by Mr. Subrahmanya Pillai against the Select Committee and I believe I owe a duty to myself and to my colleagues in the Select Committee and I have to say that the charges are aboslutely unfounded.

In the first place, he has stated that we have entirely ignored the right of the children to *Ukantudama*. Though he is a Nanjanad Vellala himself and a staunch supporter of the Bill for partition, I regret very much that he has not understood the Bill. What *Ukantudama* means is that the children of a Nanjanad Vellala are entitled to one-tenth of the share which their father would get in a partition of *tarwad* property. What has been provided for in the Bill is that the children get the whole share of the father which he would have got on partition of the *marumakkathayam tarwad* and that share is calculated in a particular way. When one-tenth going to the children and nine-tenths going to the *tarwad* is the rule, what we have provided for is that the whole goes to the children.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): As regards *Ukantudama*, is it *per stirpes* or *per capita*?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): I am coming to that. *Ukantudama* is entirely distinct from partition. There is a confusion of thought on the part of the members who support the amendment of Mr. Subrahmanya Pillai and I do not want to prejudice the members by throwing the weight of my views on the amendment. I am only justifying the position taken by the Select Committee and refuting the charges that have been made. So that when we have provided for the whole property, I do not know whether there is any justification to put in the word *Ukantudama* there. I have taken care to put in a provision that that share will be calculated with reference to what the father would have got if he were alive when the property was divided. So that, even though he dies undivided, unlike the Nair *tarwad*, the children would get what they would have got if the father was alive. So far as the *Ukantudama* is concerned, I believe, that the Nanjanad Vellala children are on much safer ground than they would be if a provision had been made.

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[Mr. V. Subba Aiyar.]

The next charge is that, so far as *Ukantudama* property is concerned, the property given by the father also is to be divided *per capita*. I think the proper way would be to bring in amendments to that effect and to get it rectified. But I do not see any amendment tabled in regard to it.

Another charge which is important is that we have not examined the documents. Though there were documents to show *per stirpes* partition and to show *per capita* partition, we were inclined to adopt *per capita* division rather than *per stirpes* division. I must, in the first place, say that the Nanjanad Vellalas are styling themselves *marumakkathayees*. The courts have declared for over a century that they are essentially *marumakkathayees* and therefore we were guided by what the courts held them to be. Whether they were once *makkathayees* or whether some of the incidents of *marumakkathayam* crept in only later on is a matter of ancient history which we need not go into. The courts have all along recognised that *marumakkathayam* principles will apply. Supposing a man dies intestate, his property will go to the nearest members of the *tarwad* according to the ordinary *marumakkathayam* law. It is also the same in the case of maintenance. That is to say, all the members are entitled to equal maintenance. In other words, the essential principles of *marumakkathayam* law were declared to be applicable to Nanjanad Vellalas and the essential principle of the *marumakkathayam* law is that every member has got equal right to the property; and in awarding maintenance, that has been observed. So that, ordinarily, without any evidence, we should have held that, if a partition was effected, *per capita* division was the ordinary thing. But we were made to understand that the practice is *per stirpes* partition and therefore we were bound to know what the sense of the community was. Therefore, we took the trouble of hearing deputations on both sides represented ably by members holding both views, just as in this House we have got members of one view represented by Messrs. Subrahmanya Pillai and Sivatanu Pillai and Messrs. Velu Pillai and Subrahmanya Pillai as representatives of the other view, both of them very intelligent and capable, having also in addition the power to make the House understand what they really want. With regard to the charge that we did nothing at all, if the documents are examined, they will show what we have done.

With regard to the charge that the committee has not examined the documents I do not know what the member means by examination. I myself took the trouble of reading every document in the presence of Mr. Subrahmanya Pillai, abstracted it and noted it. I then arranged the notes in chronological order and these were typed and circulated among the members and the members considered these. I do not know whether anything more is necessary. That is all I wish to say with regard to that question.

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Whether my friend's proposition as to the recommittal of the Bill will receive proper attention is a matter which the House has to decide after hearing the two members on the other side. I do not want to say what my conclusion on the question is. It will be known when I vote. I have only to say that the charges against the Select Committee are absolutely unfounded. We spent a lot of time in examining the documents and docketing them. I daresay Mr. Subrahmanya Pillai has got a copy of the abstract note. Therefore he must have known the position.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether, as the President of the Select Committee, Mr. Subba Aiyar recognised the force of the opposition to the passing of the draft Bill.

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): Yes. In saying that, I would remind the member that the principle employed in granting maintenance is akin to the *marumakkathayam* law and therefore every individual has got equal right unless usage has been established to the contrary. When it is admitted that there are some documents which advocate the *per capita* division and others the *per stirpes* division, we stated it is not definitely clear that the usage of the *per stirpes* partition has been established. If my friend is able to convince the House, let us have the report recommitted.

All I would say is that it is unfair to say that the members of the Select Committee have not done their duty when every member of the Select Committee took a lot of trouble over the matter. Time was given for the members concerned to produce every document connected with the question and they were examined and discussed.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): May I know whether any of the members of the Select Committee inspected the documents?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): They did not inspect all the documents. Some documents were read as samples and there was no objection taken to them. The abstract note was sent to the members and every member took part in the discussion.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): May I know whether the President of the Committee inspected all the documents and prepared an abstract?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): Yes. Some documents were also read in the presence of the members.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): May I know whether the documents are kept as records.

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): Yes. Copies of the documents are in the records?

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether the copies were prepared by the President or the members?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): I believe Mr. Subrahmanya Pillai brought his own copies and I docketed them myself. The copies are in the Additional Head Sirkar Vakil's office.

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MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): May I know whether the President had at any time the original documents with him?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): I do not know what my friend means. When I read the documents, I took notes and the originals were returned.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Am I right in saying that the President of the Select Committee took notes of the abstract out of the notes which I had written?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): Portions were read by Mr. Subrahmanya Pillai and I docketed them.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): Does it mean that I read the documents?

MR. V. SUBBA AIYAR (*Nominated*) (*Deputy President*): Yes. Many portions of the documents were read by him. I even remember that he marked the portions that were important.

MR. M. VELU PILLAI (*Co-opted*): Sir, I rise to oppose the motion. The Bill, which is now sought to be sent back to a Select Committee, is the result of consistent agitations extending over a period of eighteen years, an eventful period of time during which this very Council has undertaken to enact and place on the Statute Book laws affecting the welfare of the most important communities in the State, communities numbering two and a half millions of people and forming nearly two-thirds of the population of the State. In the case of all these communities, the demand for legislation was promptly met by Government and legislation was undertaken on the basis of the reports submitted by the committees of investigation appointed by them, and in none of these cases had Government any need for a second investigation. It was, I believe, in 1083, at the third session of the Popular Assembly, that representations were made both by the Nair members and also by the Nanjanad Vellala members regarding the necessity for legislation affecting their respective communities. The Government appointed the Marumakkathayam Committee in February 1908, and that Committee submitted its report in August of the same year; legislation was soon undertaken and the Nair community obtained a law early in 1088 (October 1912). In the meantime, as a result of the representations of the Nanjanad Vellalas, the Government appointed a committee for them in July 1910; and in June 1911, that Committee had also submitted a report to Government. The Bill, drafted on the terms of this report, was introduced in this Council in June 1915, permission for its introduction having already been given in June 1913; a Select Committee was then appointed and a report was submitted by them to this Council. In December 1916, however, the learned Law Member moved for permission to withdraw this Bill as amended by the Select Committee, on the ground that the community wanted a more comprehensive measure affecting intestate succession, etc. The subject was

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again brought to the notice of Government by means of representations in the Assembly and interpellations in this House; and the Government decided to appoint a fresh committee and a committee was appointed in February 1921. In June 1921, four additional members were also appointed to this committee. The Committee travelled throughout the country and took the greatest pains to collect evidence on matters referred to them, and a *unanimous* report was submitted by this Committee in January 1922. It is the Bill, framed on the basis of this report, that is under consideration now.

MR. M. SIVATANU PILLAI (*Tovala*): May I know from the member whether a particular clause which was opposed by the Enquiry Committee Report was engrafted in the Select Committee report?

MR. M. VELU PILLAI (*Co-opted*): I am not sure.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether a certain provision made by the Select Committee has been opposed by the Enquiry Committee, in regard to the clause dealing with the *karanavan's* shares etc?

MR. M. VELU PILLAI (*Co-opted*): Yes. We are now gradually having the *makkathayam* law. There is no need therefore for a provision for *karanavan*. So those provisions have been taken away by the Select Committee.

Speaking on this report, Mr. Subrahmanya Pillai, who was a member of this Committee, said, during the course of the discussion in this House:—

"I am now in a position to assure this House that the Committee did everything in their power to ascertain the real wishes of the people, and in this connection I wish to express the thanks of the community to the President for the interest he took, on behalf of the community, His honest work and impartial and unprejudiced judgment have won for him the good opinion of the community and they are now under a deep debt of gratitude to him. I can assure them (the members of this Council) that the report is more or less a true statement of facts and of the views expressed by the community during the course of the committee's enquiry".

MR. M. SIVATANU PILLAI (*Tovala*): May I know from the member how long he has been in the State service?

MR. M. VELU PILLAI (*Co-opted*): Twenty-one years.

MR. M. SIVATANU PILLAI (*Tovala*): Was he employed at any time of his service in Nanjanad?

MR. M. VELU PILLAI (*Co-opted*): I was not.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): May I inform the member that I have opposed the provision relating to partition in another part of the speech from which the quotation is made?

MR. M. VELU PILLAI (*Co-opted*): I do not deny it.

We find, from the committee's report, that the community numbers only 23,000 people, that 318 witnesses have been examined and that 24 have sent written answers to questions. The total number of witnesses examined by the Ezhava Law Committee in 1918 was

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only 863 out of a population of more than 6 lakhs, and that examined by the Marumakkathayam Committee in 1910 was 1021 out of a population of over 6 lakhs. It is clear that the investigation in this case was more thorough and that the volume of evidence taken was proportionately very much greater than in the case of any other community about whom enquiries have been conducted by Government. The only important controversy in regard to the provisions in this Bill is as regards the method of partition suggested; and from the committee's report it is clear that this question of the method of partition was prominently put to the witnesses as question number 7 at page 28 of the Report, as the observations of the committee at page 13 abundantly testify.

It is the *unanimous* conclusion arrived at by this Committee after so much labour and trouble that has been followed by the Select Committee in their report. The Select Committee was not bound to take any more evidence on this subject, though it no doubt was entitled to do so. The Select Committee, apparently on the representation of the member who now moves for the re-committal of this Bill, did take evidence and has submitted a well-considered report. Not only was evidence considered; but the Committee also received deputations from the two parties and allowed Vakils to argue both sides of the question. A more careful consideration could not have been bestowed upon any Bill than has been done by this Committee in this case. And yet Mr. Subrahmanya Pillai says that the documents have not been perused, that no evidence has in fact been taken and that in short the report now before this Council "does not contain a true statement of facts". Are we to act upon this representation in preference to what is stated in the Report? The Report of the Select Committee says:—

"Messrs. Subrahmanya Pillai and Chidambaratanu Pillai among us took opposite views and have done their best to present to us their different view-points. We have heard deputations from both parties on this subject. We have read the various memorials presented to us and we have also examined documents produced before us establishing their respective contentions. As this seems, however, to be the only important point on which there is difference of opinion among the members of the community, we have thought it necessary to examine the question in some detail.....We have discussed and considered the various points placed before us and we think that *per capita* division is the just and more reasonable course to adopt..... We are of opinion that the unanimous and carefully prepared report of the Committee should be followed".

MR. M. SIVATANU PILLAI (*Tovala*): May I know from the member whether he sent an answer to the questionnaire put to him?

MR. M. VELU PILLAI (*Co-opted*): Yes.

MR. M. SIVATANU PILLAI (*Tovala*): What was the method of partition that he then advocated?

MR. M. VELU PILLAI (*Co-opted*): I had then supported the *tavazhi* partition. But I have since then changed my opinion.

MR. M. SIVATANU PILLAI (*Tovala*): Was there sufficient reason for the member to change his opinion?

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MR. M. VELU PILLAI (*Co-opted*): Yes. I had sufficient reasons.

MR. M. SIVATÀNU PILLAI (*Tovala*): May I know one of his reasons at least?

MR. M. VELU PILLAI (*Co-opted*): The unsympathetic treatment by the *karnavars* of the *seshakars*. I need not stick to the view I held 10 years ago.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): When was the Enquiry Committee constituted?

MR. M. VELU PILLAI (*Co-opted*): Four years back.

MR. M. SIVATANU PILLAI (*Tovala*): Does the member say that, by efflux of time, his opinion will swing?

MR. M. VELU PILLAI (*Co-opted*): Yes, opinions may change.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether the member knows of any difference between the *marumakkathayam* community and the Nanjanad Vellala community?

MR. M. VELU PILLAI (*Co-opted*): No.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): May I know whether there is any difference peculiar to the community?

MR. M. VELU PILLAI (*Co-opted*): *Ukantudama* and *Nankudama* are peculiar to the Vellala Community in South Travancore alone. These customs are not prevalent among the Vellalas of North Travancore.

MR. S. PIRAVIPERUMAL PILLAI (*Commerce and Industry, South*): What will be the percentage of Nanjanad Vellalas in Vaikam?

MR. M. VELU PILLAI (*Co-opted*): I cannot say.

MR. M. SIVATANU PILLAI (*Tovala*): Can the member assure me that it is not more than 10 per cent at the most?

MR. M. VELU PILLAI (*Co-opted*): It may be.

Are we to say that all these statements are incorrect and that the truth lies in what Mr. Subrahmanya Pillai now says? Members of the Committee, who are now in this House, will remember that both sides were represented by Vakils who argued their respective positions before them and that abstracts of the relevant contents of the documents produced were also supplied to them. This fundamental question of the method of partition – whether it should be *per stirpes* or *per capita*—is a question solely for the determination of this Council. The decision of a Select Committee is not at all binding on this House. The question has to be discussed and decided again. What is the object of sending this Bill back again to a Select Committee? Is it to consider and decide this question again or is it to take further evidence? If it is for the purpose of taking additional evidence, the proper course to adopt is to appoint an Enquiry Committee and ask them to take evidence and report. It is not the ordinary or the proper function of a select law committee to take evidence, especially on a matter on which there is ample evidence on record; and it is an Enquiry Committee that will be

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required in such a case. Admittedly, there is no new point which requires discussion by a Select Committee. And there are no amendments tabled to-day, which require to be discussed and settled by a Committee.

MR. M. SIVATANU PILLAI (*Tovala*) : May I ask whether the member knows that there is a provision in the Standing Order enabling the Select Committee to take evidence?

MR. M. VELU PILLAI (*Co-opted*) : There may be.

What then is the object of this amendment?

It is unfortunate that attempts have been made to arrest the progress of the Bill at every stage of its career. As I have already submitted, three very important legislative measures have passed through this Council since the first committee was appointed to report on the necessity for social legislation among the Nanjanad Vellalas. The Nair Regulation was also amended and passed with very important changes since then. The Ezhava and the Christian communities have already secured laws on the basis of reports submitted by enquiry committees. There was opposition by a minority in the case of all these legislative changes; but this Council, accustomed as it is to the methods of the opposition, has always firmly supported these beneficent measures which have all become law long ago. In the case of the present Bill, all possible attempts have hitherto been made to delay its progress. The taking of additional evidence by the Select Committee was itself a source of unnecessary delay as the Enquiry Committee's report was quite sufficient for the purpose of arriving at a decision on the subject of partition. A *unanimous* report by a committee of which the present mover of the amendment was a member must be taken to have settled the question, so far as investigation was concerned. A graceful concession granted by the Select Committee has now been taken advantage of to advance further claims for the purpose of gaining time.

MR. M. SIVATANU PILLAI (*Tovala*) : May I ask whether it is a question of concession?

MR. M. VELU PILLAI (*Co-opted*) : It is, according to me, only a concession. But it is open to you to view it in any way. When the Select Committee's report was ready for discussion at the last Council, the objection then was that the co-opted member had not prepared the subject. There was no question of re-committing the Bill then. We have got here a carefully prepared report of an Enquiry Committee, and also a report of a Select Committee which says that all the questions discussed have been carefully considered. There is nothing wrong in the procedure or the methods adopted by either of the committees. Mr. Subrahmanya Pillai himself admits that the Enquiry Committee has done its work most satisfactorily and that the only question which requires decision by a Select Committee is the question of partition. That the same process should be gone over again simply because these reports do not satisfy one party is a proposition which is

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absolutely meaningless and would only serve to delay the passing of this Bill. I submit it will be destructive of the traditions and prestige of this Council to allow a course which is so manifestly unreasonable and unjustifiable.

In deciding the question whether the Bill should be delayed any longer, I hope the fact that this legislative reform has been hanging fire for the last 12 years and more would receive careful consideration by this House. The prospect of a speedy change of the law has given rise to mismanagement and misappropriation on the part of *Karnavans* and strife and litigation are not uncommon in most families. It will be disastrous if no decision is arrived at in respect of this legislation which at every moment is expected by the people to pass into law. I earnestly appeal to the members of this House to consider what a calamity it will be to the community as a whole if this Bill is allowed to hang like the sword of Damocles over the heads of the people simply because of objections of one sort or another raised to the passing of the measure at the several stages of its progress.

MR. M. SIVATANU PILLAI (*Tovala*) : May I know whether two months will consummate the calamity?

MR. M. VELU PILLAI (*Co-opted*): Yes, it will.

MR. M. SIVATANU PILLAI (*Tovala*) : May I ask whether, in the case of his own *tarwad*, he did not oppose the partition of his *tarwad* property?

MR. M. VELU PILLAI (*Co-opted*): I am not the *karanavan* of my *tarwad* and I did not oppose the partition.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*): May I know whether he belongs to Tovala or Vaikam?

MR. M. VELU PILLAI (*Co-opted*): I belong to Agastisvaram.

MR. T. J. MATTHEW (*Changanachery* cum *Peermade*) : May I know whether the election at Agastisvaram was fought out on this partition issue?

MR. M. VELU PILLAI (*Co-opted*) : It was not on this principle. Mr. Chitambaratanu Pillai did not stand for election.

MR. M. SIVATANU PILLAI (*Tovala*) : Who was the rival belonging to my community?

MR. M. VELU PILLAI (*Co-opted*) : Mr. Subrahmanya Pillai was not known to be standing as a candidate and it was at the last moment that they found he was standing. Then they interested themselves in the selection of Mr. Subrahmanya Pillai.

MR. M. SIVATANU PILLAI (*Tovala*) : May I ask whether the member was present there in the Tovala taluk during the election?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : Are we concerned here with the election campaign?

PRESIDENT : It is quite irrelevant.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*) : Sir, like Mr. Subba Aiyar, I had also the misfortune of being a member of this much-maligned Select Committee. The question before the House, briefly stated, is whether sufficient grounds have been made out by the mover of the motion for referring this Bill back to another Select Com-

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[Mr. Changanachery K. Parameswaran Pillai.]

mittee. It appears to me, Sir, that this Council will be taking a heavy responsibility in referring this again to a Select Committee because one Select Committee has already sat over the question and considered it and unless it is shown that there is very cogent and strong reason why the report should not be accepted, the Council will not be justified in appointing a fresh committee to go into the question. Therefore, the whole question before the Council is whether the member has been able to make out strong grounds for accepting the motion. In my humble opinion, he has not. The only reason brought forward by Messrs. Subrahmanya Pillai and Sivatanu Pillai is that the Select Committee did not pay sufficient attention to or did not care to understand the fact that the Nanjanad Vellalas were at one time *makkathayees* and still observe certain customs observed by *makkathayees* and therefore, in determining the method of partition, the *makkathayam* system should be applied to them. The question for consideration therefore is whether this aspect of the question was placed before the Select Committee and whether they considered it. I would invite the attention of the Council to the following passage at page 3, Part III "Partition" of the report of the Select Committee in this connection;—

"It is asserted by one party that usage is in favour of allowing members of the same grade in a *tarwad* to share equally irrespective of the number of children or descendants which any female member of the same grade may have. In other words, this party claims *per stirpes* partition. According to the other party, every member of a *tarwad* irrespective of his or her grade in the *tarwad* has an equal right and should therefore share equally. In other words, this party claims *per capita* partition. The report of the Nanjanad Vellala Committee as well as the Bill drafted by them supports the latter view. Messrs. Subrahmanya Pillai and Chidambaratanu Pillai among us took opposite views and have done their best to present to us their different view-points. We have heard deputations from both parties on this subject. We have read the various memorials presented to us and we have also examined the documents produced before us as establishing their respective contentions. As this seems, however, to be the only important point on which there is difference of opinion among the members of the community, we have thought it necessary to examine this question in some detail.

"(1) The Nanjanad Vellalas were originally *Makkathayees* who have subsequently adopted *Marumakkathayam* law This will appear from—

(*a*) the fact that wife and children have a right of *Ukantudama*;

(*b*) the fact that a daughter has a right of *Stridhanam* at the time of marriage;

(*c*) the ceremonials observed on the occasion of marriage; and

(*d*) the circumstance that the marriage expenses of a male are a charge on the *tarwad* property.

(2) Partition frequently takes place in a *tarwad* and an examination of such documents will disclose the usage of *per stirpes* partition.

The reasons for *per capita* partition are shortly these—

(1) Nanjanad Vellalas are *Marumakkathayees* with certain usages which have crept into the system.

(2) The courts have always been systematically applying the principles of the *Marumakkathayam* law to the community except in a few well-recognised cases of usage to the contrary.

(3) Every member of a *tarwad* has a right to maintenance and all adult members irrespective of their grade are entitled to get the same equally (11 T. L. J. 358); and, if *per stirpes* partition were allowed it will seriously affect vested rights.

(4) The Nanjanad Vellalas style themselves as *Marumakkathayees* in all documents.

(5) Out of 311 witnesses examined by the Committee, 224 were for *per capita* partition.

(6) The Committee's report was unanimous.

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(7) The Bill, as drafted by the Committee, was not objected to by any member of the community.

(8) A difference of opinion became manifest only when the Bill was introduced into the Council."

Now these are exactly the questions which my learned friends Messrs. Subrahmanya Pillai and Sivatanu Pillai said that the Committee ignored.

MR. M. SIVATANU PILLAI (*Tovala*): Was he not a strong advocate of *per capita* division when the Nair Bill was considered in the Council.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Undoubtedly; no other alternative was before us.

MR. M. SIVATANU PILLAI (*Tovala*): May I ask whether Mr. N. Ramakrishna Pillai was not an advocate of *per capita* division?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Yes.

MR. M. SIVATANU PILLAI (*Tovala*): May I ask whether Mr. P. K. Narayana Pillai also was not an advocate of *per capita* division?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): I think they will speak for themselves.

MR. A. K. PILLAI (*Karunagapalli*): I rise to a point of order. Questions are to be put to elicit information. But we have been hearing a series of questions as if every member who is speaking is in the witness box and every member who is asking questions is a Vakil. These questions are put not for eliciting information but to bring forward some separate arguments of their own. I think that must be objected to.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): What I beg therefore to point out is that every fact which was mentioned by Messrs. Subrahmanya Pillai and Sivatanu Pillai as having escaped the attention of the Select Committee as to the method of partition obtaining among the Nanjanad Vellalas, was discussed by them and considered by them. Whether the conclusion they arrived at is correct or not, it is for this Council to decide. But facts should not be mis-stated. If my friends Messrs. Sivatanu Pillai and Subrahmanya Pillai had read it, probably they would not have brought forward that charge against the Select Committee. Another charge is that the Committee did not properly peruse all the records and documents produced by Mr. Subrahmanya Pillai and Mr. Chidambaratanu Pillai to prove the position they took before the Committee. It appears to me, Sir, that the Committee must thank themselves for having this blame put on them because they went out of their way to receive fresh evidences. The Standing Orders did not permit it. The only Standing Orders relating to this subject, are Standing Orders Nos. 33 (4) and 34 (6). Standing Order No. 33 (4) says:—

"A Select Committee may hear expert evidence and the representatives of any special interests affected by the measures before them."

And Standing Order No. 34 (6) says:—

"A Select Committee may, for the purpose of obtaining information, invite any person to be present at its sittings."

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[Changanachery K. Parameswaran Pillai.]

Certainly the receiving in evidence of documents by any Select Committee does not come either under "expert evidence" or "hearing representatives of any special interest" or "having any person present at its sittings" for the purpose of obtaining information. Anyhow, it was a pardonable weakness. In the case of communities not well represented in this Council, the members of other communities are in a delicate situation. If they take one side, motives will be attributed to them. And if they take the other side, then also they will be blamed. On account of this fact, in their weakness, the Select Committee thought that they should go very carefully into the matter and then come to a decision which might be acceptable to all parties concerned. Therefore, both parties were given opportunities of adducing new evidence as it was pointed out that the Enquiry Committee had not the benifit of perusing documentary evidence. Of course, Mr. Subba Aiyar has said what was done with respect to the documents presented to the Committee. It is a mistake to say that we did not peruse the documents themselves. It was impossible. For the Committee to have gone through each document and determine whether the method of partition adopted therein was *per capita* or *per stirpes* would have been a huge waste of public time. They could not by reading these documents, without further facts, determine that question. What we did was to request Mr. Subba Aiyar to do that work for us and he kindly did so with the help of Mr. Subrahmanya Pillai. He then prepared a tabular Statement for our use which we studied. We also heard Vakils on both sides.

MR. M. SUBRAHMANYA PILLAI (*Agastiswaram*): Was the evidence prepared in original discussed by the Select Committee?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Yes. Everything was discussed. We asked Mr. Subba Aiyar whether he was in a position to deduce any uniform principle from the documents and he said no. Our examination of the abstract confirmed that view. I think, more than what the Select Committee have done, it will not be humanly possible for them to do. After the mature opinion of Mr. Subba Aiyar, I think, we are justified in taking that all the documents available have been considered. Therefore, I submit that the Select Committee went out of its way in receiving any documentary evidence and therefore they voluntarily brought all this obloquy upon their head which they might very well enjoy. Therefore in re-committing this Bill to a fresh Select Committee, it might be open to any member of that Select Committee to object to take evidence. If the object of re-committal is to examine all the original evidence, I think that it can very well defeat that object. If what my friend wants is an investigation into the whole question, if they make proper grounds for that, it is open to the Government to do so. After all, the only question they want the Select Committee to go into is as to whether the *per capita* or *per stirpes* principle should be adopted. It can be discussed in this Council and the whole question may be threshed out here. The House practically goes into committee when discussing this question, and after every member has had his say, the House will

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arrive at a proper decision. No useful purpose will be served by re-committing this Bill, and in my humble view it will be merely a waste of public time and public money. In my experience it has been the practice for members who did not want a partition bill to move for a re-committal to a select committee. Take, for instance, the Ezhava Bill.

MR. M. SIVATANU PILLAI (*Tovala*): In the case of the Nanjanad Vellala Bill, was there any such mandate?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): I am not aware of any mandate. He knows it himself. In the case of the Ezhava Bill, there was the same motion and the same difficulties were pointed out in regard to the Select and Enquiry Committees' reports. I also remember when the Nayar Bill was originally under discussion the same arguments were brought forward against the provisions which the Committee recommended. It was stated that the examination of witnesses was defective, that some witnesses alone were examined while the rest merely agreed with them.

MR. M. SIVATANU PILLAI (*Tovala*): May I ask whether the Nayar Regulation Amendment Bill was not carried to a new Legislative Council?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): Yes, it was passed by this Council.

Mr. Sivatanu Pillai asked why when the result of an examination of documents by Select Committee showed that some represented *per stirpes* partition, and some *per capita* partition should you choose the *per capita* partition and not *per stirpes* partition. I think there is very good reason for it. The Enquiry Committee reported in favour of *per capita* partition. The Bill was drafted on the lines of *per capita* partition; and unless very cogent reasons were shown for changing the provisions of the draft bill, the Select Committee would not have been justified in making a departure. No such reasons were shown.

MR. M. SUBRAHMANYA PILLAI (*Agastisvaram*): May I know whether the Select Committee did not make a report quite contrary to the Report of the Enquiry Committee?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Quilon*): If we did, we were entitled to do so as we have been thoroughly satisfied that there was good reason for making the change. Now the question is whether there is sufficient ground to make alterations in the draft Bill itself. A Bill is not submitted for the purpose of altering it in every detail. Unless proper reason is shown why a particular portion of the Bill should be altered, we are not entitled to make any alteration.

MR. C. P. TARAKAN (*Kunnatnad*): I move that the question be now put.

The motion fell through for want of seconding.

The Council adjourned at 4-59 P. M. to meet again at 11-30 A. M the next day.

T. P. RAMASUBBA AIYAR,
Secretary to the Legislative Council.

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